

compensation received shall be determined under the principles provided in chapter 22 of the Code and the regulations thereunder (see section 3231(e) and § 31.3231(e)-1). Therefore, compensation paid for time lost shall be deemed earned and received for purposes of this section in the month in which such time is lost, and compensation which is earned during the period for which a return of taxes under chapter 22 is required to be made and which is payable during the calendar month following such period shall be deemed to have been received for purposes of this section during such period only. Further, compensation is deemed to have been earned and received when an employee or employee representative performs services for which he is paid, or for which there is a present or future obligation to pay, regardless of the time at which payment is made or deemed to be made.

(2) *Example.* The application of this paragraph may be illustrated by the following example.

Example. Employee A rendered services to X during 1973 for which he was paid compensation at the monthly rate of \$650 which was taxable under the Railroad Retirement Tax Act. A was paid \$550 by X in January 1973 which was earned and deemed received in December 1972 and \$650 in January of 1974 which was earned and deemed received in December of 1973. A also earned and received wages in 1973 from employer Y, which were subject to the employee tax under the Federal Insurance Contributions Act, in the amount of \$6,000. A paid hospital insurance tax on \$13,800 (\$7,800 compensation from X including \$650 earned and deemed received in December 1973 but paid in January 1974 and not including \$550 paid in January 1973 but earned and deemed received in December 1972, \$6,000 compensation from Y) received or deemed received or earned in 1973. For purposes of the hospital insurance tax imposed by section 3101(b), these amounts are all wages received from an employer in 1973. Therefore, A is entitled to a special refund for 1973 under section 6413(c) and this section of \$30 (1.0%×\$13,800—1.0%×\$10,800).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6950, 33 FR 5359, Apr. 4, 1968; T.D. 6983, 33 FR 18020, Dec. 4, 1968; T.D. 7374, 40 FR 30954, July 24, 1975]

§ 31.6414-1 Credit or refund of income tax withheld from wages.

(a) *In general.* Any employer who pays to the district director more than the correct amount of—

(1) Tax under section 3402 or a corresponding provision of prior law, or

(2) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for refund of the overpayment or may claim credit for such overpayment, in the manner and subject to the conditions stated in this section and § 301.6402-2 of this chapter (Regulations on Procedure and Administration). If credit is claimed pursuant to this section, the amount thereof shall be claimed by entering such amount as a deduction on a return of tax under section 3402 filed by the employer. If credit is taken pursuant to this section, a claim on Form 843 is not required, but the return on which the credit is claimed shall have attached as a part thereof a statement, which shall constitute the claim for credit, setting forth in detail the grounds and facts relied upon in support of the credit, and showing such other information as is required by the regulations in this subpart and by the instructions relating to the return. No refund or credit to the employer shall be allowed under this section for the amount of any overpayment of tax which the employer deducted or withheld from an employee.

(b) *Period of limitation.* For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)-1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

§ 31.6652(c)-1 Failure of employee to report tips for purposes of the Federal Insurance Contributions Act.

(a) *In general.* In the case of failure by an employee to furnish, pursuant to the provisions of section 6053(a), to his employer a report of tips received by him in the course of his employment, which constitute wages (as defined in